

**STATE OF CALIFORNIA  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION  
Held on March 7, 2012  
Sacramento, California**

**PRESENT:**

Art R. Carter, Chairperson  
Ed Lowry, Board Member  
Michael Wimberly, Executive Officer  
Ursula Clemons, Presiding Administrative Law Judge  
Martin Fassler, Presiding Administrative Law Judge  
Jeff Mojcher, Chief Counsel  
Kari Johnson, Industrial Relations Counsel III  
Thomas Song, Industrial Relations Counsel II  
Lee Berlin, Executive Secretary

**MINUTES OF FEBRUARY 15, 2012:**

*(Approval of minutes recording actions of previous Board meeting)*

ACTION: Member Lowry moved that the Board approve the draft minutes of the February 15, 2012 Board meeting for posting. Chairperson Carter seconded. The Board voted to approve the draft minutes of the February 15, 2012 Board meeting for posting.

**ADMINISTRATIVE MATTERS:**

*(Information regarding the general administration of matters pending before the Appeals Board)*

1. CALENDARING/CASELOAD REPORT

*(Review and discuss current calendaring/caseload information)*

ACTION: Executive Officer Wimberly discussed calendaring reports for hearings scheduled and held in January and February 2012.

2. 2012 RULEMAKING MATTERS

*(Discuss potential Board rulemaking changes)*

ACTION: Counsel Johnson reported on recent changes to the rulemaking procedures.

**NEW BUSINESS:**

*(The Appeals Board hears and/or discusses new matters brought before the members.)*

1. 2011/2012 BUDGET

*(Review and discuss budget issues for the next fiscal year)*

ACTION: No report

2. ELECTRONIC APPEALS BOARD REGULATORY BOOKLET

ACTION: Executive Officer Wimberly reported on the status of the project to post an updated Rules of Practice and Procedure booklet on the OSHAB website.

**OLD BUSINESS**

*(The Appeals Board hears and/or discusses matters on a follow-up basis.)*

ACTION: No report

**LEGISLATION:**

ACTION: No report

**CHAIRPERSON'S REPORT:**

ACTION: No report

**BOARD MEMBER'S REPORT:**

ACTION: No report

**EXECUTIVE OFFICER'S REPORT:**

ACTION: No report

**STAFF REPORTS:**

ACTION: No report

**PUBLIC COMMENT:**

ACTION: No report

The Board recessed to its Closed Session.

**DECISIONS OF ADMINISTRATIVE LAW JUDGES:**

ARIAL TECHNOLOGIES, LLC., 11-R3D2-1383 AND 1384

ACTION: Member Lowry moved that the Board vote to approve this Decision of an Administrative Law Judge. Chairperson Carter seconded the motion. The Board voted to accept this Decision of an Administrative Law Judge.

CHEVRON PRODUCTS CO. EL SEGUNDO REFINERY DBA CHEVRON,  
11-R6D4-1463 AND 1464

ACTION: Member Lowry moved that the Board vote to approve this Decision of an Administrative Law Judge. Chairperson Carter seconded the motion. The Board voted to accept this Decision of an Administrative Law Judge.

FDO INC. DBA GRAND AMERICAN DOORS, 10-R6D2-1215 THROUGH 1219

ACTION: Member Lowry moved that the Board vote to reconsider this Decision of an Administrative Law Judge on its own motion. Chairperson Carter seconded. The Board voted to reconsider this Decision of an Administrative Law Judge on its own motion.

LEHIGH SOUTHWEST CEMENT COMPANY, 10-R5D1-1517 AND 1518

ACTION: Member Lowry moved that the Board vote to approve this Decision of an Administrative Law Judge. Chairperson Carter seconded. The Board voted to accept this Decision of an Administrative Law Judge.

SKANSA USA CIVIL WEST CA DISTRICT, INC., 09-R3D2-3886 AND 3887

ACTION: Member Lowry moved that the Board vote to approve this Decision of an Administrative Law Judge. Chairperson Carter seconded. The Board voted to accept this Decision of an Administrative Law Judge.

**ORDERS OF ADMINISTRATIVE LAW JUDGES:**

CARLOS GABRIEL AVINA DBA SUPREME VALLEY AG INC., 10-R6D7-3054  
BARRETT BUSINESS SERVICES INC., 11-R3D1-2671  
BD & G SANDBLASTING, 11-R4D2-1580 AND 1581  
BEAUCHAMP DISTRIBUTING COMPANY, 11-R4D1-1577 AND 1578  
BENDPAK, INC., 11-R4D3-3095  
JOHN BENWARD CO. INC., 11-R1D5-1144 THROUGH 1146  
BIMBO BAKERIES USA., 10-R6D2-1102 AND 1106  
BRAGA RANCH, 10-R1D2-3615  
BRITHINEE ELECTRIC, 11-R3D3-2797  
BUTTE STEEL & FABRICATION, INC., 10-R1D2-2440  
CALIFORNIA PAVEMENT MAINTENANCE COMPANY, INC., 10-R2D1-0346 \*  
CAMERON BROS CONSTRUCTION CO INC. DBA CAMERON BROTHERS  
CONSTRUCTION, 11-R3D2-0353 THROUGH 0354  
CARDINAL ENVIRONMENTAL CONSULTANTS, INC. DBA 5M CONSULTANTS,  
10-R3D6-3642  
ROGER CARUSO ENTERPRISES INC. DBA CENTURY PALLETS, 11-R4D2-1089 AND  
1090

CEMEX INC. – REDLANDS PLANT, 11-R3D3-2742  
CENTURY HILL ASSOCIATION, INC. 11-R4D1-1612  
CHINA PACIFIC CO., INC., 11-R6D2-1455 THROUGH 1462  
CLARK’S HARDWOOD FLOORS INC., 11-R1D2-1191 \*  
COLOR SPOT NURSERIES INC., 11-R6D7-1477  
CONOCO PHILLIPS, 11-R6D4-2101  
CORINTHIAN COLLEGES, INC. DBA WYOTECH, 11-R1D2-2731  
DEL RIO CONVALESCENT CENTER, 11-R6D2-2306 THROUGH 2312  
DHV INDUSTRIES INC., 11-R6D2-2371 AND 2373  
DMS FACILITY SERVICES INC., 10-R4D1-2678 AND 2679  
DOLE FRESH VEGETABLES, INC., 11-R1D2-2529 \*  
DYNAMEX, INC., 10-R1D4-2934 \*  
EAGLE MARINE SERVICE LTD, 10-R6D2-1442  
EMPEROR’S COLLEGE OF TRADITIONAL ORIENTAL MEDICINE, \*  
11-R4D1-0979 and 0980 & 12-R4D1-0511  
FERRARI COLOR, 11-R2D1-0524  
FONTANA PAPER MILLS, INC., 11-R3D3-2852 AND 2853 \*  
FREEDOM AG, INC., 11-R6D5-3060  
FRYMER DEVELOPMENT INC. DBA FRYMER CONSTRUCTION,  
11-R4D1-1424  
PHILLIP W. GELLAR DBA PWG ENTERPRISES, 11-R6D5-30-51 AND 3051  
GENMARK AUTOMATION, 11-R1D2-0493  
GLOBAL CONSTRUCTION, INC., 11-R3D5-1162  
GRAYD-A METAL FABRICATORS, 11-R3D6-2104 THROUGH 2106  
HENKELS & MCCOY, 11-R3D6-1741 AND 1742 \*  
JJR CONSTRUCTION, INC., 10-R1D2-3196  
J M PLUMBING, 10-R1D4-3002 THROUGH 3004  
K2 DEMOLITION COMPANY, INC., 11-R4D2-1165 AND 1166  
KAISER PERMANENTE, 10-R1D4-2708 AND 2709  
KELLOGG COMPANY, 10-R1D2-3574  
LA CITY PUBLIC WORKS –CONTRACT ADMINISTRATION, 11-R4D1-0746  
LA COLONIAL TORTILLA PRODUCTS, INC., 11-R4D2-1016  
MAXIM CRANE WORKS LP, 11-R3D2-0167- AND 0168  
MERRILL FARMS LLC, 10-R1D2-3091  
MISSION PLASTICS INC., 11-R3D3-3052  
NORCAL MASONARY BUILDERS, INC., 10-R2D1-3506  
ERICK NIELSEN ENTERPRISES INC., 11-R2D5-1000  
J S PALUCH COMPANY INC., 10-R3D6-3186 THROUGH 3188  
SALGADO LABOR, 11-R4D3-1783  
SANTA FE AGGREGATES, INC., 09-R5D1-2632  
SEA CATCH DBA SEACATCH SEAFOODS, 11-R6D4-2424 AND 2425  
SOUTHERN WINE & SPIRITS OF AMERICA, INC., 11-R3D6-1818 AND 1819  
SSA TERMINALS (OAKLAND) LLC, 10-R1D4-3616  
STONE ETC., INC., 11-R4D1-1426 \*  
TALTECH CONSTRUCTION INC., DBA TCI, 11-R4D1-1647 AND 1648  
JOSE TORRES, DBA J & J AUTO BODY SHOP, 10-R6D7-2566 AND 2567

DELORIOUS TODD DBA TODD CONSTRUCTION & DEMOLITION,  
11-R4D2-0557  
TRUE BLUE, INC. DBA LABOR READY, 10-R1D4-2935 \*  
UNITED PACIFIC SERVICES, INC., 11-R4D3-2279  
VICTORVILLE GLASS CO INC., 11-R6D2-2344  
WAL MART #5766, 10-R1D2-3388 AND 3389  
WESTWOOD BUILDING MATERIALS COMPANY, 11-R4D1-0624 AND 0625  
WORLD KITCHEN LLC, 11-R3D3-3092  
YAWITZ INC. DBA EVERGREEN LIGHTING, 11-R3D6-1940 THROUGH 1944

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Chairperson Carter seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

DISTRIBUTION CENTER MANAGEMENT GROUP (DCMG), 11-R3D3-2896

ACTION: Member Lowry moved that the Board vote to reconsider this Order of an Administrative Law Judge. Chairperson Carter seconded. The Board voted to reconsider this Order of an Administrative Law Judge on its own motion.

**ORDERS DISMISSING APPEALS:**

METRO SHEET METAL, INC., 11-R6D2-0782  
PLAM MOTOR SPORTS, INC. DBA BMW OF SANTA CRUZ COUNTY,  
10-R1D2-3442 THROUGH 3445  
SALVADOR DELTORO & HECTOR GARCIA, 10-R6D5-2244  
SORRENTO MESA AUTO CENTER, 10-R3D2-3181  
STONE FRUIT HARVESTING, 10-R2D5-2165

ACTION: Member Lowry moved that the Board vote to approve these Orders Dismissing Appeals. Chairperson Carter seconded. The Board voted to approve these Orders Dismissing Appeals.

**PETITIONS FOR RECONSIDERATION:**

*(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)*

UNDERGROUND CONSTRUCTION CO., INC., 09-R1D3-3518

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Chairperson Carter seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

**DENIALS OF PETITIONS FOR RECONSIDERATION (DRAFTS):**

BEAR LABEL MACHINE, INC., 11-R2D3-3528

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Chairperson Carter seconded. The Board voted to approve this draft Denial of petition for Reconsideration for signature.

**MATTERS PENDING RECONSIDERATION:**

AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138  
AC TRANSIT, 08-R1D4-0135  
AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786

AGWOOD MILL & LUMBER, INC., 08-R1D5-1068

ACTION: The Board discussed this Matter Pending Reconsideration.

VERNON MELVIN ANTONSEN & COLLEEN K. ANTONSEN, INDIVIDUALLY DBA ANTONSEN CONSTRUCTION, 06-R2D3-1272  
ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655  
BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1219 AND 1221  
BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963  
BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445 AND 3448  
BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239 THROUGH 2241  
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563  
C & M FINE PACK, INC. 07-R6D2-4149 THROUGH 4155  
C.C. MYERS, INC., 08-R1D1-952 THROUGH 955  
CA RASMUSSEN, INC., 08-R4D5-219 AND 220  
COMMERCIAL METAL FORMING, 09-R3D1-1592  
CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960  
CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387  
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038  
DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362  
DESIGN BUILDERS, INC., 08-R4D4-1901  
DUININCK BROS., INC., 06-R4D3-2871

DUKE PACIFIC, INC., 06-R3D3-5175 THROUGH 5177

ACTION: Member Lowry moved that the Board approve this draft Decision After Reconsideration for signature. Chairperson Carter seconded. The Board voted to accept this draft Decision After Reconsideration for signature.

DUKE PACIFIC, INC., 08-R3D3-574  
EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,

09-R6D2-2325 THROUGH 2332  
EZ MIX, INC., 08-R4D3-1898  
FORTUNA IRON WORKS, 06-R2D3-4222  
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687  
HB PARKCO, 07-R4D2-1730 AND 1731

THE HERRICK CORP., 07-R3D1-0495

ACTION: Member Lowry moved that the Board approve this draft Decision After Reconsideration for signature. Chairperson Carter seconded. The Board voted to accept this draft Decision After Reconsideration for signature.

HOME DEPOT, 10-R3D6-3284  
JENSEN PRECAST, 05-R2D1-2377

JOHN M. FRANK CONSTRUCTION, 06-R4D3-968

ACTION: Member Lowry moved that the Board approve this draft Decision After Reconsideration for signature. Chairperson Carter seconded. The Board voted to accept this draft Decision After Reconsideration for signature.

LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844  
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714  
LION RAISINS, INC., 08-R2D5-2253 AND 2254  
LOS ANGELES, COUNTY OF, DEPT. OF PUBLIC WORKS, 07-R4D2-2540  
MARINE TERMINALS, 08-08-R6D2-1920  
MICHELS CORP. DBA MICHELS PIPELINE CONSTRUCTION, 07-R5D1-4274  
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298  
NIBBI BROTHERS ASSOCIATES, INC., 07-R1D1-2494  
ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667  
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022  
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864  
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING, INC., 08-R2D1-0025 AND 0026  
POUK & STEINLE, INC., 09-R3D3-0491  
RAMON ARANDA DBA I & R PALLETS, 10-R6D5-9053  
RIEZEBOS CONSTRUCTION, INC., 08-R2D5-1730  
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048  
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710  
SDCCD – CONTINUING EDUCATION N C CENTER, 11-R3D2-1196  
SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055  
SHERWOOD MECHANICAL, INC., 08-R3D2-4690 THROUGH 4693  
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025  
SMUD, 08-R2D1-4887 THROUGH 4889  
MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414 THROUGH 3418

STAFFCHEX, 10-R4D3-2456 THROUGH 2458  
SUNRISE GROWERES FROZ SUN FOODS, 09-R4D3-2850  
A TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443  
TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION,  
05-R2D4-2650 AND 2651  
A TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 09-R4D5-0459  
AND 0460

UNITED PARCEL SERVICE, 07-R3D3-3322

ACTION: Member Lowry moved that the Board approve this draft Decision After Reconsideration for signature. Chairperson Carter seconded. The Board voted to accept this draft Decision After Reconsideration for signature.

WEBCOR CONSTRUCTION, 06-R1D1-2093 THROUGH 2095

ACTION: Member Lowry moved that the Board approve this draft Decision After Reconsideration for signature. Chairperson Carter seconded. The Board voted to accept this draft Decision After Reconsideration for signature

**LEGISLATION:**

*(Discussion of pending legislation which may affect the Board).*

ACTION: The Board discussed pending legislation.

**PENDING LITIGATION:**

*(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)*

**SUPERIOR COURT:**

1. E.L. YEAGER CONSTRUCTION COMPANY, INC. (DOSH v OSHAB),  
34-2007-00882192-CU-WM-GDS, (01-3261)

ACTION: Chief Counsel Mojcher informed the Board that this matter has been dismissed by the court.

2. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB)  
(00-440)
3. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
4. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
5. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
6. WPCS INTERNATIONAL SUI SUN CITY, INC., 34-2010-80000430  
(09- 9280/9281)



CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

March 7, 2012

Page 9

7. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-R5D1-3611)

ACTION: Chief Counsel Mojcher provided an update for the Board.

8. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
9. SMUD, 34-2010-80000723 (08-R2D1-4887)
10. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
11. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
12. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
13. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010 (08-R2D1-3273)
14. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)

**COURT OF APPEAL**

1. JERLANE, INC., D060844 (2007-00056381) (01-4344 and 4345)

**PERSONNEL:**

*(Issues regarding staff)*

ACTION: Executive Officer Wimberly discussed personnel actions.

The Closed Session adjourned at 1:04 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. With no further business, the meeting was adjourned at 1:05 p.m.